TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~22~~ 18.

THE TERRITORY OF NEW MEXICO *EX REL.* E. J. McLEAN & COMPANY, APPELLANTS,

vs.

THE DENVER AND RIO GRANDE RAILROAD COMPANY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

FILED MARCH 24, 1905.

(19,681.)

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OCTOBER TERM, 1905.

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vs.

THE DENVER AND RIO GRANDE RAILROAD COMPANY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 2, 1905.

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1 Be it remembered, that heretofore, on to wit the sixth day of December, A. D., 1901, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico, a transcript of record in a certain cause therein pending entitled, The Territory of New Mexico *ex rel.*, E. J. McLean & Company, appellants and The Denver & Rio Grande Railroad Company, appellee, which said transcript of record was and is in words and figures, following to wit:

2 TERRITORY OF NEW MEXICO, }
County of Santa Fe. }

Pleas before the Honorable John R. McFie, associate justice of the supreme court of the Territory of New Mexico and judge of the first judicial district thereof, and of the district court within and for the county of Santa Fe, in said district.

Be it remembered that heretofore, to-wit, on the 25th day of September A. D. 1901, there was issued out of the office of the clerk of said court, a writ of mandamus, which said writ of mandamus is in the words and figures as follows to-wit:

In the District Court of the First Judicial District of the Territory of New Mexico Sitting in and for the County of Santa Fe.

TERRITORY OF NEW MEXICO, *ex Rel.* E. J. McLEAN & Company, *vs.* THE DENVER & RIO GRANDE RAILWAY COMPANY. } No. 4315.

The Territory of New Mexico, to the Denver & Rio Grande Railroad Company, Greeting:

Whereas, our said court has been given to understand upon the information of E. J. McLean & Company, relator:

1. That said relator is a partnership doing business at Denver, in the State of Colorado where it has principal offices and place of business, and is non-resident of the Territory of New Mexico; that it has an agency at Santa Fe, in the Territory of New Mexico, and is engaged in the purchase, storing and trafficking in wool and hides in the Territories of New Mexico and Arizona and in the State of Colorado, and engaged further in the marketing and shipping of hides to the general markets therefore in the United States of America, to-wit, at the cities of Chicago, in the State of Illinois, New York in the State of New York, and Boston, in the State of Massachusetts, and in the importation into the Territory of of New Mexico of hides from the Territory of Arizona and the State

3

of Colorado, and in general dealing and trafficking in hides originating in the said Territories of Arizona and New Mexico, the Republic of Mexico, and the States of Colorado and Texas; also in the storing of hides so gathered and purchased by it, at the cities of Santa Fe, Albuquerque and Las Vegas, in the said Territory of New Mexico and the re-shipment thereof at such times as may be convenient and advisable in the course of said trade and business, to Denver, in the State of Colorado, destined for the general markets aforesaid in Chicago New York and Boston, and to the said cities of Chicago, New York and Boston direct.

2. That the respondent railroad company is a company engaged in operating a line of railroad extending from the city of Santa Fe northward beyond the boundary of the Territory of New Mexico, into the city of Denver, in the State of Colorado and engaged in carrying of freights and passengers over its said line for tariffs, rates and charges by it publicly advertised, and as a common carrier, and was so engaged in business as aforesaid at all times hereinafter stated.

3. That heretofore, to-wit, on September 7th 1901, in the due course of its business as aforesaid, relator placed upon its transportation wagons used by it for freighting goods designed for railroad shipment, one certain bale of dry hides, of the weight then and there of 970 pounds, the same being then and there pre-
4 pared and baled for shipment according to the custom of trade in that respect by being compressed by mechanical means, known technically as "machine compressed," the object of the said compression being to enable said relator to get the minimum weight at least allowed by said respondent on car-load shipments into the car to be used by respondent in carrying the same and being then and there securely baled and packed in compact form, in accordance with the custom in said trade and shipping, the said bale being marked "Mc610," and consigned to E. J. McLean & Co., Denver, Colorado; that said bale of dry hides so marked and compressed as aforesaid, was on said wagons hauled to the depot of respondent, and deposited as was customary in shipping between relator and respondent, into the custody of respondent, and upon its freight platforms provided by respondent for the reception of freight, and relator thereupon prepared and laid before the respondent's agents the customary shipping receipt, in triplicate, for the said hides; that each and all of relator's doings in and about the matters and things aforesaid were exactly in conformity with the trade custom which had been built up by similar dealings between relator and respondent, during more than five years next preceding the said transaction.

4. That thereupon, respondent declined to execute the said shipping receipt, as it has usually and customarily done in such matters, and as it was its legal duty to do, and declined to execute the same in any manner whatsoever, but instead notified relator in writing that relator's "shipment of one bale dry hides offered for

shipment this date (September 7th 1901) destined beyond the
5 boundary of this Territory, remains on our (respondent's)
platform subject to your (relator's order), that "the laws of the Territory do not permit of the forwarding of hides beyond the boundary line without having first secured a certificate of inspection from the cattle sanitary board;" and that "therefore, we, (respondent) are unable to handle the shipment referred to without such certificate;" which said shipping receipt, in triplicate, so tendered to respondent, together with said notification in writing so made by respondent to relator, are filed in this action, marked Exhibit "A."

5. That said shipment so offered to said respondent, consigned beyond the limits of the Territory of New Mexico, contained 29 steer hides and 17 cow hides, which had been purchased and gathered by relator in the general course of trade and trafficking therein in its business as aforesaid, and had been in the possession of relator at its ware-house in the city of Santa Fe aforesaid, for a period not less in instance than thirty days, and running from such period, to three months or more during all of which time the same were held by relator open and subject to inspection by the public of by any sheriff, constable, or inspector desiring to make inspection thereof for any purpose whatsoever, and during which time relator had at various times offered to the cattle sanitary board of New Mexico and its secretary and inspectors full privilege and facility to inspect the same, should they so desire, but they and each of them had failed and neglected so to do.

6. That said shipment so offered by relator to respondent was made with the usual and customary understanding that the freight
rates and charges of said respondent for the transportation
6 thereof should be paid upon delivery to the consignee of the
same at its destination, and the shipment of said bale of hides was not refused by said respondent on said account, as will appear by said Exhibit "A."

7. That the refusal of respondent to transmit the said hides to their destination beyond the limits of the Territory of New Mexico was made solely by reason of a certain statute attempted to be passed by the 34th Legislative Assembly of the Territory of New Mexico, being entitled "An act relative to peddling of meats and for other purposes" appearing as chapter XLV, of the published laws of 1901 of the Territory of New Mexico, an authenticated copy of which is hereby filed marked Exhibit "B," in this action, and by reason of the fact as recited in the written statement made by respondent contained in Exhibit "A" filed in this action, that no tags had been attached to said hides by any inspector of that certain board known as the cattle sanitary board of New Mexico.

8. That the refusal of said respondent to forward the said bale, hauled and placed in transit and shipped by relator, was and is illegal and unjustifiable under the said pretended statute, because the said pretended statute was at the time of its passage and ever

since then, has been, void, unlawful, illegal, and unauthorized and beyond the power of the said Legislative Assembly of the Territory of New Mexico to pass or enact; and further, in specification of such illegality of said pretended statute, relator shows and gives the court to understand and be informed:

a. That the said pretended act in so far as the same pretends to cover the premises herein, is contained only in sections 3 and 4 of said "act relative to peddling of meats and for other pur-
7 poses," which said sections 3 and 4 constitute a separate and distinct enactment, foreign in its matter and terms to the remainder of said act, contained in the 1st, 2nd and 5th sections thereof, and surreptitiously injected into said enactment as entitled, and as such has neither title nor enacting clause.

b. That the said pretended enactment, as completely contained in said sections 3 and 4, unlawfully attempts to legislate and discriminate against the exportation of an article of commerce over the lines of railroad companies and common carriers, without any application whatever to the exportation of the same by other means or by private freighting.

c. That said pretended enactment, as completely contained in said sections 3 and 4, imposes an obstacle and burden upon commerce among the several States of the United States, making the performance of the said statute and commerce thereunder practically impossible; in that it requires that all hides offered for shipment beyond the boundaries of the said Territory of New Mexico shall have been inspected and tagged by an authorized inspector of the cattle sanitary board of New Mexico, "for the district in which such hides originate," it being the fact that in the process of trade and trafficking in hides in the Territory of New Mexico, and by said relator as aforesaid, hides originating in every county and district of the said Territory of New Mexico, from the county of San Juan to the county of Eddy are sold and bargained from hand to hand, without record or bill of sale, but simply as other chattels, until finally the same are gathered and purchased by relator and stored in relator's said warehouses in Albuquerque, Santa Fe and Las Vegas,
8 and it being further the fact therefore that to make an inspection according to the terms of said pretended statute would require the attendance at Albuquerque, Santa Fe and Las Vegas, of some twenty-five inspectors, each being from the various districts of the Territory of New Mexico, to the remotest part thereof, whence the said hides have originated.

d. That said pretended enactment as completely contained in said sections 3 and 4, imposes a prohibitive obstacle and burden upon commerce among the several States of the United States, making the performance of the said statutes and the transaction of business thereunder impossible, in that it requires that all hides offered in New Mexico for shipment beyond the boundaries of said territory by railroad or common carrier, shall bear a tag evidencing an inspection by an inspector for said cattle sanitary board for the

district where said hides originated, and in so doing prohibits the receipt by any railroad company or common carrier of all hides not so inspected or tagged, whether the same be New Mexico, Colorado, Texas, Mexico or Arizona hides; it being the fact that relator stores many hides gathered and purchased in Arizona, in its warehouses in New Mexico, awaiting the appropriate and most advantageous time for marketing and shipping the same; wherefore, under the said pretended enactment, said hides from Arizona cannot be re-shipped out of the Territory of New Mexico without inspection and tagging, which inspection and tagging cannot be performed because no inspector exists for the district whence said hides have originated, the same being beyond the boundaries of the Territory of New Mexico; that by operation of said pretended enactment, hides imported and stored in New Mexico, are thenceforth utterly and
9 entirely prohibited from re-shipment beyond the limits of the Territory of New Mexico, and interstate commerce therein destroyed.

e. That said pretended enactment, contained in said sections 3 and 4, only assumes to lay a fee or charge for inspection upon hides when the same are destined for shipment beyond the Territory of New Mexico, and is not attempted to be executed by said cattle sanitary board upon hides so long as the same are bargained and sold and shipped by railroad or common carrier in inter-territorial trade or in the markets of the Territory of New Mexico; but the same is pretended to disqualify only for interstate commerce any hides uninspected and untagged, while leaving the same free and open to trade within the said Territory.

f. That said pretended enactment, contained in said sections 3 and 4, attaches its fee of charge only when the said hides are "offered for shipment" beyond the limits of the Territory of New Mexico and does not attach its fee or charge to any hides not so designed or offered for exportation; the shipment prohibited being further only that by railroad or common carrier, whereby the said fee or charge becomes a tax imposed exclusively upon commerce among the several States by railroad or common carrier.

g. That said pretended enactment, contained in said sections 3 and 4, undertakes to impose said fee or charge not only upon hides originating in the Territory of New Mexico, but upon hides originating in other States or Territories, or in the Republic of Mexico, and brought into or stored within the Territory of New Mexico, when the same are offered for re-shipment out of said Terri-
10 tory; it being the fact that relator in this action gathers many hides from the said Territory of Arizona, and holds them in warehouses in the Territory of New Mexico as aforesaid, awaiting the appropriate and most advantageous time for the marketing of the same.

h. That said pretended enactment, contained in said sections 3 and 4, undertakes to impose an excessive fee or charge upon all hides intended for exportation, the same being ten cents per hide,

without reference to the value of the said hide, and the value of hides so dealt in and exported from the said Territory of New Mexico being: for horse hides, 50 cents to $1.00; bovine hides, including calf skins, from 10 cents to $1.00; goat hides, 5 cents to 90 cents; sheep hides 2 cents to 50 cents; mule hides 50 cents to $1.00; the said fee or charge of ten cents per hide for such inspection being excessive and out of all proportion to the value of such hides, and being unequal and unjust taxation thereof.

4. That said pretended fee or charge is largely in excess of the amount of fee or charge which might be absolutely necessary for the making of an inspection such as is required by said pretended enactment, it being the fact that hides as aforesaid are gathered for exportation, in car load lots, in the said towns of Albuquerque, Santa Fe and Las Vegas, and that shipments are made from said points about twelve to fifteen times per year, on an average; that at such times there are on hand for shipment large numbers of hides, varying from 1000 to 3000, and that the same can be inspected at the rate of at least 400 per day, before being baled and compressed for shipment as hereinafter stated; that at such rate of inspection the amount of such inspection fees would be at least forty dollars
11 per day, whereas the fees and compensation of an inspector of the cattle sanitary board are fixed by law at $2.50 per day and necessary expenses, which said expenses could not exceed $5.00 per day in the discharge of his duties.

5. That said pretended fee or charge so imposed upon interstate commerce is not by law used to cover the expenses of said inspection, nor paid to said inspector for his per diem or expenses, but is directly by law attempted to be appropriated to the general fund for the support of the said cattle sanitary board in all its functions, the said fund being known as the cattle indemnity fund, out of which the said board pays: the compensation of the veterinary surgeon employed by it, not more than $1,500.00 per year and actual necessary expenses, the duties of which said official relate exclusively to quarantine and health service, and are confined to cattle, and have nothing to do with hides; the compensation of assistants employed by said board, at $2.50 per day and expenses, their duties being generally in quarantine service and the inspection of slaughter houses; the compensation of other assistants who may be requisite, under section 190 of the compiled laws of 1897, in the sanitary protection of cattle, whose duties have naught in common with the inspection of hides; the actual and necessary expenses of the sessions of the cattle sanitary board and the expenses for books and records necessary under the quarantine regulations, and for salary of secretary; expenses incurred in the slaughter of infected animals under the quarantine regulations, and for burning the carcasses thereof; all indemnities to owners of cattle for cattle destroyed under the quarantine statutes; expenses for inspecting slaughter
12 houses and general expenses of said board, whereby the said inspection fee or charge assessed against hides designed for

extra-territorial shipment by railroad or common carrier becomes purely a tax for general revenue purposes and not solely or exclusively for the making of the inspection therein mentioned.

[illegible]. That the said pretended inspection is impos — becomes purely a tax for general revenue purposes and under the established customs and usage of interstate trade in hides, for the reason that at the time when said hides are offered for shipment and the necessity for inspection under the said act attaches, the said hides are, (by the customs of trade and in order to secure advantageous freight rates, so that the said commerce may be carried on and the hides of New Mexico may be marketed in the markets of the world on equal terms with the hides of other portions of the United States of America) first compressed by machinery into a hard and compact mass, getting the greatest possible weight into the smallest possible compass, and then bound and baled by wire, in such compressor, in bales containing from thirty to one hundred and fifty hides, and so offered for shipment, the intent being to get the greatest possible number of hides into a car such as is commonly used by railroad companies, and such course being necessary by reason of the close competition in hides throughout the said United States and the necessity for economy in their shipment and marketing, in modern business methods, and such compression of hides being practiced by all shippers throughout the country, in order so to compete in marketing the same; that by the terms of said statute, it is thereupon attempted to impose upon the railroad company or common carrier, by
13 criminal responsibility, the duty of examining minutely each hide which has been so packed, baled and wired as preliminary to its offer for shipment, to ascertain whether or not each of such hides bears an inspection tag, no provision being made by said law for the tagging of any bale of hides, nor for the issuance of any certificate of inspection thereon; that, to comply with the said statute, the customs and methods of trading and exporting hides would be utterly destroyed and ruined, in the opening by said railroad company or common carrier of such bales, thereby releasing compression thereon and necessitating another compression of said hides for shipment, at the warehouses of said relator, and a rebaling of the same for shipment; whereupon, it would again be impossible for the said common carrier to know whether or not the hides contained in said package, so rebaled, were tagged or inspected or not, though such common carrier would again be held to criminal responsibility in the premises.

[illegible]. That the larger portion of the hides produced in New Mexico and Arizona and by said relator stored in New Mexico and shipped, at advisable times to the general hide markets of the country, are marketed in the cities of Chicago, New York and Boston; that the proximity of manufactories for the working of leather, and tanneries for the tanning of the same, and forests producing bark for the making of tannic acid, necessary in the working of such hides into leather, have established these three cities as the centers of com-

merce in hides in the United States of America; that the market value and price of hides in said cities fluctuates, as does that of any other general commodity produced by industry and marketed in the course of interstate commerce, in the United States of America, and that it becomes, therefore, and
14 is, important to the buyers of hides and shippers thereof, all through the country including relator, in order to successfully transact business in such hides in competition with similar dealers and traders throughout the United States, to know by telegraphic advices the prevailing price of such hides from day to day and the market fluctuations thereof, and immediately at such times as may be advantageous and advisable, to market such hides by telegraphic bargains and sale, and to contract for the immediate delivery thereof, in said cities of Chicago, New York and Boston, by fast transportation as soon as the same may, by the use of modern business methods and railroad facilities, be accomplished; that, not to observe these conditions and transact business as rapidly as possible, utilizing all the facilities of modern commercial usuage, would be to fail utterly to get the hides so produced in New Mexico and Arizona, into the said markets, and would result in the abandonment of interstate dealings in hides, so far as the producers of hides in this Territory were concerned; that by the terms of said inspection law, no time is specified for inspection, nor is the said cattle sanitary board nor any inspector placed under any legal obligation to make inspection at any time, or with any diligence, nor is any remedy provided or given to relator by which the inspection of such hides by said board or its officers can be compelled at any time or place, nor is any remedy given the shipper for the utter failure of said board and its officers to do their duty in this behalf at any time, nor are the said hides made subject to taxation in any sense until the same are offered for extra-territorial shipment; that, in consequence thereof, it is impossible for relator promptly or in a business like way, or in equal competition with other dealers
15 throughout the United States to market his said hides, but, when relator may have concluded to ship the same, it would become necessary, under the operation of said law, to await the pleasure and convenience of the inspectors of said cattle sanitary board, gathered from all the various districts of the Territory of New Mexico, to inspect and tag the said hides so as to qualify the same for shipment; that in these matters and things the said law is impractical, unenlightened, and barbaric in its disregard of the necessity of modern business methods, and a gross and ruthless interference with interstate commerce.

m. That the said law is unequal in its imporition upon extra-territorial shippers of hides of infinite delay in the inspections of their hides, until the pleasure or convenience of the inspectors, whereas butcherers and slaughterers of cattle within the Territory of New Mexico are only required to hold the same for inspection for thirty days after killing; it being further the fact that each and all

of the hides so offered for shipment by relator are of the class known as "dry hides" and necessarily of the age of from thirty to sixty days or more, and that a large percentage of them have come from the hands of butchers who have held them for inspection the thirty days required by law.

n. That the said law interferes with interstate commerce in requiring the holding of hides designed for extra-territorial shipment, until the same have been inspected at the pleasure and convenience of the cattle sanitary board, and discriminates against interstate commerce in so providing and in requiring a tax or charge to be paid thereon, and in providing the limited term of thirty days for the inspection of such hides when in the course of local trade, and in not requiring *and* fee or charge thereon.

16 *o*. That the pretended inspection provided for by said act is without purpose or object as an inspection law, requiring only the keeping of a memorandum of the brands and the name of the shipper, otherwise called the purchaser, which data can have no legal efficacy for the protection of the health or property or safety of the people of the Territory of New Mexico; that no provision is made for the withholding from shipment of any unbranded hides, or of any hides which the inspector may have reason to believe have been dishonestly taken by any person, or for the withholding of any hides which may appear to be infected in any way, but the same are entitled to be tagged and shipped, that instead of protecting the property, health, morals or safety of the people of New Mexico, the said law thus facilitates the exportation of stolen or infected hides, which being tagged are entitled to be taken beyond the boundaries of the Territory of New Mexico by railroad or common carriers, and are always, without tags or inspection, permitted to be taken beyond said boundaries by private exportation; that the keeping of a record of the brands and the name of the shipper affords no conceivable remedy to the original owner of such hide, nor to any intermediate owner, in case the same has been stolen from him, nor does it avail him anything to be able to trace the property so stolen to any outgoing freight car carrying the same away from New Mexico, as no record of the consignee is required to be kept; nor does the said act on the other hand afford any assistance in the detection of any possible thief of such hide in the Territory of New Mexico, inasmuch as no record of the person who sold the hide to the shipper is required to be kept, or can be legally exacted under such law, nor does such enactment in any way aid or give

17 assistance to any section or article in the penal code of the Territory of New Mexico; wherefore the said statute utterly and entirely fails to establish a police regulation of any efficacy whatever, but simply makes an indefinite memorandum of useless facts, containing the fact that the shipper named has exported from the Territory a certain number of hides, bearing certain brands, or bearing no brands at all, and which said hides may have originated in the Territory of Arizona, the Republic of Mexico, the State of

Colorado, the State of Texas, or the Territory of New Mexico, and which said hide may have been in the possession and in the warehouse of said shipper for any term or period from thirty days to about a year.

p. That the said inspection law is incapable of due or reasonable execution for the reason that when hides have been stored, as is customary in trade therein, in warehouses, the same are classified by their quality, and the place of their origin is lost sight of, whence it becomes impossible to tell in what district of New Mexico, such hides may have originated, or whether in New Mexico at all; and for the further reason that in bartering and trading from hand to hand throughout the country said hides are oftentimes exposed to the weather, and become hard and damaged thereby, and it becomes impossible in many instances for any inspector or other person to decipher the brand thereon.

q. That said pretended statute attempts to tax the property on non-residents greater than the property of residents of the Territory of New Mexico, in laying a tax only upon hides going out of the Territory of New Mexico upon sales made to interstate purchasers of hides in the cities of Chicago, Boston and New York, and
18 in not laying such tax upon hides remaining within said Territory and used for local consumption.

r. That said pretended inspection law is an attempt to regulate commerce among the several States of the United States and between the Territory of New Mexico and such States.

s. That such pretending statute is an attempt unlawfully to levy an export duty upon hides going out of the Territory of New Mexico and across its boundaries, into the States of Texas and Colorado and other States of the United States and into the Territory of Arizona, and into the Republic of Mexico, the same not being absolutely necessary for the execution of any existing inspection laws of the Territory of New Mexico.

t. That no inspection laws, as such, exist on the sub-ect matter of said statute, within the Territory of New Mexico, and no fee or charge can be laid for such purpose upon exports until legal inspection enactments have been made in the premises.

u. That said pretended enactment denies to the citizens of each State all privileges and immunities of citizens in the several States, and attempts to abridge the privileges and immunities of citizens of the United States.

v. That said pretended enactment is repugnant in its several sections, providing different degrees of punishment for the violation of the same provisions.

w. That said pretended enactment discriminates against commerce in hides and citizens engaged therein.

x. That no law exists creating the office or employment of inspector for any district in New Mexico.

9. That despite the matters and things aforesaid respond-
19 ent continues to fail and refuse and neglect to do its duty in the premises, or to transport or carry the said bale of hides

from its said depot to the destination thereof at Denver, in the State of Colorado; wherefore relator is unable to transact its interstate commerce as aforesaid, and is without any plaint, speedy or adequate remedy in the ordinary course of law and the public business is thereby embarrassed and hindered by the said unlawful neglect and refusal of said respondent to forward the said shipment as aforesaid;

Now, therefore, we being willing that full, speedy and exact justice shall be done in the premises, do commend you, the Denver & Rio Grande Railroad Company, that immediately upon the receipt of this writ you do execute and forward to its destination, to-wit, E. J. McLean & Company, Denver, Colorado, that certain shipment of one bale dry hides marked "Mc610" and of the weight of 970 pounds, tendered and offered for shipment to you by said relator, E. J. McLean & Company; or that you show cause before this court at the chambers of the judge in the court house, at ten o'clock a. m., on the 3rd day of October, A. D. 1901, why you have not so done, and that you then and there return this writ with your certificate of having done as commanded herein.

By order of the court.

Witness: A. M. BERGERE,
[SEAL.] Clerk of Said Court.

The above writ of mandamus is allowed against the Denver & Rio Grande Railroad Company, returnable on the 3rd day of October, 1901, the same to be served by personal delivery thereof to the agent of the said Denver & Rio Grande Railroad Company at its station at Santa Fe, New Mexico, by the agent of relator, L. A. Hughes, who is hereby designated therefor, he to make the return thereof on a true copy of the writ.

JOHN R. McFIE,
Associate Justice and Judge of Said Court.

Witness:
Attest: A. M. BERGERE,
[SEAL.] Clerk of said Court.

And on the same day, to-wit, the 25th day of September, A. D. 1901, there was filed in the office of the clerk of said court, an exhibit marked Exhibit "A" which said Exhibit "A" is in words and figures as follows, to-wit:

Form 3756–8–98–250m.

Original. Shipping Receipt. No. —.

The Denver & Rio Grande Railroad Co.

SANTA FE STATION, September 7th, 1901.

Received from E. J. McLean & Co., the following freight marked as per margin, which we promise to deliver at the railroad com-

pany's freight station at Denver, Colorado, subject to terms and conditions expressed in bills of lading of the Denver and Rio Grande Railroad Company, notice of the terms of which is hereby admitted.

If desired, this receipt can be exchanged at the local freight office for the usual bill of lading of the Denver & Rio Grande Railroad Company.

It is agreed that the liability of the carrier ceases after the freight is unloaded from the car at —— where it has no agent.

21 Limitation of Valuation Agreement.

In order to secure the rate of —— which is less than the regular rate from —— and in consideration of said rate being granted and agreed upon to apply on the shipment herein described, consisting of the articles described below, consigned by —— to ——, it is hereby agreed that the undersigned, in whose favor this contract is executed, that value of the goods herein described does not exceed —— dollars —— and if the same or any part of them are lost or damaged while in transit, or before delivery is effected to the consignee, and the Denver & Rio Grande Railroad Company, or any other company over whose line said good- may be carried under this contract, shall be legally liable for such loss or damage, the amount of value claimed therefor shall not exceed the sum of —— dollars ——.

Signature, —— ——.

Witness, —— ——.

Consignee, marks and destination.	Articles.	Weight, subject to correction.
"Mc" 610 E. J. McLean & Co. Denver, Colo.	1 bale dry hides (machine comp.)	970

When freight is destined off or beyond the line of the D. & R. G. R. R., agents will be careful to note that the name here inserted is the station at which freight leaves the road.

Received for the railroad.

——, Agent.

22 Pro. No. —.

SANTE FE, NEW MEXICO, Sept. 7th, 1901.

Mess. E. J. McLean, & Co. Santa Fe, New Mex.

GENTLEMEN: Your shipment of one bale dry hides offered for shipment this date, destined beyond the boundary of this Territory remains on our platform subject to your order. The laws of the Territory do not permit of the fo-warding of hides beyond the boundary line without having first secured a certificate of inspection from the cattle sanitary board. Therefore, we are unable to handle the ship-

ment referred to without such certificate. In the absence of this certificate the shipment remains subject to your risk. Will you be kind enough to give the matter prompt attention.

Very truly yours,

T. J. HELM,
Gen'l Ag't D. & R. G. R. R.

On the same day, to-wit, the 25th day of September, A. D. 1901, there was also filed in the office of the clerk of said court an exhibit marked Exhibit "B," which said Exhibit "B," is in words and figures as follows, to-wit:

TERRITORY OF NEW MEXICO, }
Office of the Secretary. }

Certificate.

I, George H. Wallace, secretary of the Territory of New Mexico, do hereby certify there was filed for record in this office at 10:45 o'clock a. m. on the nineteenth day of March, A. D. 1901, Council bill No. 47, entitled, "An act relative to peddling of meats and for other purposes"

23 And also, that I have compared the following copy of the same, with the original thereof now on file, and declare it to be a correct transcript therefrom and of the whole thereof.

In witness wher-of, I have hereunto set my hand affixed my official seal this first day of April, A. D. 1901.

GEO. H. WALLACE,
[SEAL OF NEW MEXICO.] Secretary of New Mexico.

(10c. revenue stamp.)

Council Bill No. 47.

An Act Relative to Peddling of Meats and for Other Purposes.

Be it enacted by the Legislative Assembly of the Territory of New Mexico:

SECTION 1. Any person or persons hereafter engaging in the business of peddling beef in this Territory, shall first obtain from the authority provided by law for the issue thereof, a peddlar's license to carry on such business, and shall pay therefor the sum of two hundred and fifty dollars, said payment to be made annually in advance, which said license fee when collected, shall be covered into the wild animal bounty fund of the county, wherein said sum shall be paid and collected. This act shall not apply to any person who may sell or otherwise dispose of any beef killed in good faith for his own use and this act is intended only to apply to such persons as make a business of peddling.

SECTION 2. Any person found peddling beef without first having obtained a license provided for in section 1 of this act, shall, upon

conviction, be deemed guilty of a misdemeanor and shall be
24 punished by a fine not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than three months nor more than six months, or, by both such fine and imprisonment and the violation of any of the provisions of this act shall constitute a separate offense for each day that such provisions are violated.

SECTION 3. Hereafter it shall be unlawful for any person, firm or corporation to offer, or for any railroad company, or other common carrier to receive, for the purpose of shipment or transportation beyond the limits of this Territory, any hides that have not been inspected and tagged by a duly authorized inspector of the cattle sanitary board of New Mexico, for the district in which such hides originate. For each hide thus inspected there shall be paid by the owner or holder thereof, a fee or charge of ten cents and such fee or charge shall be a lien upon the hides thus inspected, until the same shall have been paid. Each inspector of hides shall keep a complete record of all inspections made by him, and shall at once forward to the secretary of the cattle sanitary board, on blanks furnished him for that purpose, a complete report of each inspection, giving the names of the purchaser and shipper of the hides, as well as all the brands thereon, which said report shall be preserved by the secretary as a part of the records of his office.

SECTION 4. Any person, firm or corporation, common carrier, railroad company or agent thereof, violating any of the provisions of this act, or refusing to permit the inspection of any hides as herein provided shall upon conviction thereof be deemed guilty of
25 a misdemeanor and shall be fined in any sum not exceeding one thousand dollars for each and every violation of the provisions of this act.

SECTION 5. Section 92 of the compiled laws of 1897 is hereby repealed.

SECTION 6. This act shall take effect and be in force from and after its passage.

J. FRANCISCO CHAVES,
President of the Council.
W. E. MARTIN,
Chief Clerk of the Council.
BENJAMIN M. READ,
Speaker of the House of Representatives.
R. L. BACA,
Chief Clerk of the House of Representatives.

Approved by me this 19th day of March, A. D. 1901.
MIGUEL A. OTERO,
Governor of the Territory of New Mexico.

Filed in the office of the secretary of New Mexico, March 19th 1901, 10:45 a. m.
GEO. H. WALLACE, Secretary.

And thereafter, and on, to-wit, the 3rd day of October, A. D., 1901, there was filed in the office of the clerk of said court, a motion to quash the alternative writ of mandamus heretofore issued, which said motion to quash is in words and figures as follows, to-wit:

In the District Court Sitting in and for the County of Santa Fe.

TERRITORY OF NEW MEXICO *ex Rel.* B. J. McLEAN & Co.
vs.
THE D. & R. G. R. R. Co.

Comes now the defendant, the Denver & Rio Grande Rail-
26 road Company by E. L. Bartlett and Charles A. Spiess, its attorneys, and moves the court to quash the alternative writ of mandamus issued out of the above entitled cause and directed to the defendant for that;

First. Said alternative writ was improvidently awarded.

Second. Said alternative writ was awarded upon insufficient allegations contained in the petition for said alternative writ filed in this cause.

Third. Said petition for said alternative writ by its allegations does not state a cause of action.

Fourth. Said petition for said alternative writ does not contain allegations upon which said alternative writ could lawfully be awarded.

Fifth. A compliance with the command contained in said alternative writ wherein said defendant is directed to receive for shipment the said baled dry hides mentioned and described in said petition would be in violation of the provisions of sections 3 and 4 of chapter 45 of the Session Laws of 1901 of the Territory of New Mexico and subject the defendant to the pains and penalties prescribed therein.

E. L. BARTLETT,
CHAS. A. SPIESS,
Attorneys for Respondent.

And thereafter, and on towit, the 23rd day of November, A. D. 1901, there was filed for record in the office of the clerk of said court, a final judgment, which said final judgment is in words and figures, as follows, towit:

In the District Court Sitting in and for the First Judicial District of the Territory of New Mexico, County of Santa Fe.

THE TERRITORY *ex Rel.* McLEAN & Co.
vs.
THE D. & R. G. R. R. — No. 4315. Mandamus.

27 The above cause coming on to be heard by the court at chambers upon the alternative writ of mandamus heretofore

in this cause and the motion of the respondent to quash the same, and said motion being argued by Hon. Chas. A. Spiess for the respondent and Hon. W. B. Childers and R. C. Gortner for the relator, the same is taken under advisement by the court and the court now being fully advised in the premises hereby sustains the said motion to quash, and it is ordered, adjudged and decreed by the court now here that the said writ is hereby quashed and held for naught and the said cause is dismissed at the costs of the relator to be taxed, and judgment is hereby rendered against the said relator herein, the same to be entered in by the clerk of this court. And it is so ordered.

JOHN R. McFIE,
Associate Justice of the Supreme Court
and Judge of said Court.

And thereafter, and on towit, the 23rd day of November, A. D. 1901, there was filed in the office of the clerk of said court a motion for appeal, which said motion for appeal is in words and figures as follows, towit:

In the District Court, County of Santa Fe, Territory of New Mexico.

TERRITORY OF NEW MEXICO *ex Rel.* E. J. McLEAN & Company, Relators. *vs.* DENVER & RIO GRANDE R'D Co., Respondent.	Motion for Appeal.

Comes now the said plaintiff, by the said relator, and moves the court to grant it an appeal to the supreme court of the Territory of New Mexico from the judgment and decision of the said district court above entitled, as contained in the record in the above
28 entitled cause, wherein final decision and judgment, quashing the writ of mandamus, etc., was made and entered of record on the 23rd day of November, A. D. 1901.

W. B. CHILDERS,
CATRON & GORTNER,
Attorneys for Plaintiff and Relator.

And on the same day, towit, the 23rd day of November, A. D. 1901, there was filed for record in the office of the clerk of said court an order granting appeal, which said order is in words and figures as follows, to-wit:

"Upon reading and filing the motion of plaintiff, by said relator, applying for an appeal in the above entitled cause to the supreme court of the Territory of New Mexico, from the judgment and decision of the said district court, as contained in the record in the above cause, wherein final decision and judgment, quashing the writ of mandamus, etc., was made and entered of record on the 23rd

day of November, 1901, the court being now sufficiently advised in the premises.

It is considered, ordered and adjudged that the said plaintiff, by said relator, be and it hereby is allowed an appeal as moved and prayed to the supreme court of the Territory of New Mexico from the judgment and decision of said district court in the above entitled cause, and it is ordered that the clerk of this court do issue citation to the said respondents in accordance with law.

JOHN R. McFIE,
Associate Justice, etc.

Nov. 23, 1901.

29 It is stipulated and agreed by and between parties to the above entitled cause, by their attorneys, that the foregoing transcript prepared in said cause by the clerk of the district court in and for the county of Santa Fe, contains the entire record of pleas and proceedings in said cause in said district court, necessary to a review thereof on this appeal.

W. B. CHILDERS,
CATRON & GORTNER,
Attorneys for Plaintiff and Relator.
CHAS. A. SPIESS,
EDWARD L. BARTLETT,
Attorneys for Respondent.

30 TERRITORY OF NEW MEXICO, }
County of Santa Fe. }

TERRITORY *ex Rel.* E. J. McLEAN & Co. }
vs. } No. 4315.
THE DENVER & RIO GRANDE R. R. Co. }

I, A. M. Bergere, clerk of the district court of the first judicial district of the Territory of New Mexico, in and for the county of Santa Fe, do hereby cer-fy that the above and foregoing twenty-one pages contains the entire record of pleas and proceedings in said cause and court as the same remain on file and of record in my said office, and as embraced within the foregoing stipulation of counsel.

In witness whereof, I have hereunto set my hand and the seal of said court, at my office in the city of Santa Fe, county and Territory aforesaid, this 6th day of December, A. D. 1901.

[SEAL.] A. M. BERGERE, Clerk.

31 And afterwards, on to wit, on the seventh day of January, A. D., 1902, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico, an assignment of errors in the above entitled cause, which said assignment of errors were and are in words and figures, following to wit:

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1902.

TERRITORY OF NEW MEXICO *ex Rel.* E. J. McLean & Co., Relators, Appellants. vs. THE DENVER & RIO GRANDE RAILROAD Co., Appellee.	No. 934. Appeal from District Court, Santa Fe County.

Assignment of Errors.

Come now the said appellants and show to the court here that in the record, proceedings and decree of the district court in the above entitled cause there are manifest errors, to the prejudice of these appellants, in this, to wit:

1. That the court erred in sustaining the motion of respondent to quash the writ of mandamus in said cause.

2. That the court erred in dismissing the said action.

3. That the court erred in refusing to grant its peremptory writ of mandamus.

4. That the court erred in granting judgment in favor of respondent and in failing to grant judgment in favor of plaintiff and relator.

5. That the court erred in many and divers other respects apparent on the record.

Wherefore the said appellants pray that said record may
32 be seen and examined by this honorable court; that the errors of said district court may be corrected, its judgment annulled, and that these appellants may be restored to all things which they have lost by reason thereof.

W. B. CHILDERS,
CATRON & GORTNER,
Attorneys for Appellants.

And afterwards, on to wit, at a regular term of the supreme court of the Territory of New Mexico, begun and held at Santa Fe, the seat of Government, on the first Wednesday after the first Monday in January, A. D. 1902, on the seventeenth day of the said regular term, the same being the 27th day of January, A. D. 1902, the following among other proceedings were had and entered of record, to wit:

THE TERRITORY OF NEW MEXICO *ex Rel.* E. J. McLean & Co., Appellants. vs. DENVER & RIO GRANDE R. R. Co., Appellee.	No. 934. Appeal from District Court, Santa Fe County.

This cause coming on to be heard upon the transcript of record, assignment of errors and brief of counsel is argued by W. B. Childers,

Esq., for appellants, and C. A. Spiess, Esq., for appellees, and argument not being concluded, it is ordered that this cause be, and the same hereby is continued until tomorrow morning at ten o'clock a. m.

And afterwards, on to wit, on the eighteenth day of the said regular term, the same being the twenty-eighth day of January, A. D. 1902, the following among other proceedings were had and entered of record, to wit:

33 TERRITORY OF NEW MEXICO *ex Rel.* E. J. McLean & Company, Appellants, vs. THE DENVER & RIO GRANDE R. R. Co., Appellee. | No. 934. Appeal from District Court, Santa Fe County.

This cause again coming on to be heard upon the transcript of record, assignment of errors and briefs of counsel, and argument not yet being concluded, is again argued by C. A. Spiess, Esq. for appellee and R. C. Gortner Esq., for appellants, and submitted to the court and the court not being sufficiently advised in the premises, takes the same under advisement.

And afterwards, on to wit, at a regular term of the supreme court of the Territory of New Mexico, begun and held at Santa Fe, the seat of government on the first Wednesday after the first Monday in January, A. D., 1904, on the twelfth day of the said regular term, the same being the twenty-first day of January A. D., 1904, the following among other proceedings were had and entered of record as follows, to wit:—

TERRITORY OF NEW MEXICO *ex Rel.* E. J. McLean & Company, Appellants, vs. THE DENVER & RIO GRANDE R. R. Co., Appellee. | No. 934. Appeal from District Court, Santa Fe County.

This cause again coming on for rehearing, the rehearing herein having been heretofore ordered by the court, and coming on to be heard upon the transcript of record, assignment of errors and briefs of counsel, is argued by R. C. Gortner Esq. and William R. Childers Esq. for appellants, and C. A. Spiess, Esq. for appellees, and submitted to the court and the court not being sufficiently advised in the premises, takes the same under advisement.

34 And afterwards, on to wit, at the said regular term of the supreme court of the Territory of New Mexico, on the twenty-second day thereof, the same being Saturday, September third A. D. 1904, the following among other proceedings were had and entered of record, as follows, to wit:—

TERRITORY OF NEW MEXICO *ex Rel.* E. J. McLean & Company, Appellants, *vs.* THE DENVER & RIO GRANDE R. R. Co., Appellee.	No. 934. Appeal from District Court, Santa Fe County.

This cause having been ordered re-argued, by the court, and again coming on to be heard upon the transcript of record, assignment of errors, and briefs of counsel, is submitted by counsel upon briefs, and the parties herein, are granted leave to file additional briefs if they so desire, and the court not being sufficiently advised in the premises, takes the same under advisement.

And afterwards, at the said regular term of the supreme court of the Territory of New Mexico, on the twenty-fifth day thereof, the same being the 14th day of September, A. D., 1904 the following among other proceedings were had and entered of record, as follows to wit:—

TERRITORY OF NEW MEXICO *ex Rel.* E. J. McLean & Company, Appellants, *vs.* THE DENVER & RIO GRANDE R. R. Co., Appellee.	No. 934. Appeal from District Court, Santa Fe County.

This cause having been argued by counsel and submitted to and taken under advisement by the court at a previous day of the
35 present term, and the court being now sufficiently advised in the premises, announces its decision by Associate Justice Parker, Chief Justice Mills, and Associate Justice Pope concurring, Associate Justice Baker, dissenting, affirming the judgment of the court below, for reasons stated in the opinion of the court on file; it is therefore considered and adjudged by the court that the judgment of the district court in and for the county of Santa Fe, whence this cause came into this court, be and the same hereby is affirmed, and that in accordance therewith, it is considered by the court that the said writ is hereby quashed and held for naught and the said cause is dismissed at the cost of appellants to be taxed, and that judgment is hereby rendered against the said appellants herein.

And afterwards, on to wit: *on* the twentieth day of January, A. D., 1905, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a motion by appellants praying an appeal to the Supreme Court of the United States, which said motion was and is in words and figures, following to wit:—

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1905.

THE TERRITORY OF NEW MEXICO *ex Rel.* E. J. McLean & Company, Appellants, vs. THE DENVER & RIO GRANDE R. R. Co., Appellee.	No. 934. Appeal from District Court, Santa Fe County.

Motion for Appeal.

Now come the appellants herein, and move this court, to be granted an appeal from the judgment and decree of this court
36 as the same is entered of record, in the above entitled cause to the Supreme Court of the United States.

CATRON & GORTNER,
W. B. CHILDERS,
Attorneys for Appellants.

And afterwards, on to wit, at a regular term of the supreme court of the Territory of New Mexico, begun and held at Santa Fe, the seat of government on the first Wednesday after the first Monday in January, A. D., 1905, on the thirteenth day of the said regular term, the same being the twentieth day of January A. D., 1905, the following among other proceedings were had and entered of record viz:—

THE TERRITORY OF NEW MEXICO *ex Rel.* E. J. McLean and Company, Appellants, vs. THE DENVER & RIO GRANDE R. R. Co., Appellee.	No. 934. Appeal from District Court, Santa Fe County.

This cause coming on to be heard upon the motion of appellants herein, praying this court for an appeal from the judgment and decree of this court to the Supreme Court of the United States, and the court being sufficiently advised in the premises, grants the same. It is therefore considered and adjudged by the court that the said appellants in the above entitled cause, do have an appeal from the judgment and decree of this court, to the Supreme Court of the United States.

And afterwards, on to wit, on the fourteenth day of September, A. D., 1904, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico, the opinion of the court in the above entitled cause, which said opinion of the court was
37 and is in words and figures, following to wit:—

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1904.

THE TERRITORY OF NEW MEXICO *ex Rel.* E. J. McLean & Company, Appellants,
vs.
THE DENVER & RIO GRANDE R. R. Co., Appellee.

No. 934. Appeal from District Court, Sante Fe County.

Syllabus.

1. The only limitation requiring uniformity of taxation in the Territories is containes in the fourteenth amendment of the Federal Constitution guarantying equal protection of laws, which is satisfied by a tax imposed on a part of the community based on a reasonable and just classification of taxpayers.
2. Laws 1901 p. 96, c. 45, requiring hides of animals killed at slaughter houses to be kept for 30 days free to the inspection of the cattle sanitary board, but nowhere requiring any person to visit any place for the purpose of inspecting hides except once every 30 days, for which a charge of ten cents a hide is required to be paid by the owner, was not an exercise of the general taxing power of the Territory, since it did not attempt to levy a tax on the hides of animals in general killed within the State, but of the police power.
3. Laws 1901 p. 96 c. 45, sec. 6, prohibiting the transportation beyon*f* the limits of the Territory of any hides not inspected and tagged, for which a fee of 10 cents a hide was permitted, was not objectionable, as a violation of the Federal Constitution. art. 1. sec. 10, prohibiting any State, without the consent of Congress, to lay duties on exports, in so fas as it applied to the shipment of hides within the United States.
4. Const. U. S. a-t. 1 sec. 10 providing that no State shall, without the consent of Congress, lay any duties on imports or exports,
38 except what may be necessary for executing its inspection law, and containing provisions for the payment of fees for carrying the same into effect, is applicable to interstate commerce.
5. Laws 1901, p. 96 c. 45, providing for the inspection of hides, permitting a fee of 10 cents a hide to be charged therefor against the owner, and prohibiting any railroad company from shipping hides not inspected and tagged beyond the limits of the Territory, was valid as an inspection law, though its purpose was not to improve the quality of the hides, etc., but was for the sole purpose of aiding in the detection and punishment of crime or fraud against the cattle industry.
6. Since a part of the fees collected for the inspection of hides fixed by Laws 1901, p. 96, c. 45 sections 3 and 4 are applicable to the payment of expenses incurred by the cattle sanitary board

as provided by Comp. Laws, sec. 220, and the secretary of such board has various other duties to perform than those pertaining to the business of inspecting hides, a showing that the cost of such inspection was much less than the amount authorized to be charged by section 3, was insufficient to establish the invalidity of the statute on the ground that the fees provided were beyond the requirements of inspection.

7. Laws 1901, p. 96, c. 45 sections 3, 4, providing for the inspection of hides, and authorizing a charge of 10 cents a hide against the owner for such inspection, do not apply to pelts and skins.

39 Opinion of the Court.

PARKER, J.:

On the 7th day of September, A. D. 1901, Levi A. Hughes, agent of E. J. McLean & Company, of Denver, Colorado, offered for shipment over the defendant company's railroad, one bale of dry hides, weighing 970 pounds, and containing 29 steer hides and 17 cow hides, consigned to E. J. McLean & Company, Denver, Colorado, and delivered same upon the depot platform of said railroad company, at Santa Fe, New Mexico, for transportation from Santa Fe to Denver. T. J. Helm, general agent of said railroad company *action* for the company, declined to receive or transport the hides, outside of the limits of the Territory for want of evidence that the hides offered for shipment had been inspected as required by the laws of New Mexico. That the hides in question had not been inspected as required by section- three and four of chapter 45 of the Session Laws of 1901, or inspected under any laws of the Territory, is admitted for the purpose of this case. Relator sued out an alternative writ of mandamus, commanding said railroad company to receive and transport the hides offered, or to show cause why it had not done so. On the return day the defendant railroad company moved to quash the writ for the reason that the petition for the writ did not state a cause of action. Hearing was had upon the petition, writ, and motion to quash, and the writ was quashed and the cause dismissed. Thereupon an appeal was sued out to this court by the relator.

40 It is conceded by counsel that consistent statutes relating to the same subject matter, though enacted at different times, are treated prospectively, and are considered as one act. U. S. *v* Freeman, 3 How. 556; South. Stat. Con., sec. 288/ The first act relating to inspection of hides was passed in 1884, and provided that all butchers should keep a record of all animals slaughter-, and keep the hides and horns of such animals for thirty days after slaughter free to the inspection of all persons, Compiled Laws, section 84, and provided a penalty for failure to keep the record and the hides and horns, section 86, and a penalty for refusal of inspection of the record or hides, section 87. In 1891, all persons were required to keep hides for thirty days for the inspection of any sheriff,

deputy sheriff, or any constable, or any board or inspector, or any officer authorized to inspect hides, section 89, and provided a penalty, section 90. In 1889, amended in 1895, a cattle sanitary board was created, section 183, with power to adopt and enforce quarantine regulations and regulations for the inspection of cattle for sale and slaughter, section 184, and to pay inspectors not to exceed $2.50 per day and their expenses, section 190. In 1891, the cattle sanitary board was authorized and required to make regulations concerning inspection of cattle for shipment, and hides and slaughter-houses, section 208, and there was provided the details of arrangement for inspection of cattle, section 212 and the duties of cattle inspectors were enlarged by providing: "Every slaughter-house in this Territory shall be carefully inspected by some one of the inspectors aforesaid, and all hides found in such slaughter-houses shall be carefully compared with the records of such slaughter-houses, and a report in writing setting forth the number of cattle killed at any such slaughter-house since the last inspection. * * * the names of the persons from whom each of said cattle was bought, the brands and marks upon each hide, and any information that may be obtained touching the violation by the
41 owner of any such slaughter-house, or any other person, of the provisions of an act entitled "An act for the protection of stock and for other purposes", approved April 1, 1884. For the purpose of making the inspection authorized by this act, any inspector employed by the said sanitary board shall have the right to enter in the day or night time any slaughter-house or other place where cattle are killed in this Territory and to carefully examine the same, and all books and records required by law to be kept therein, and to compare the hides found therein with such records", section 213. In 1893 it was provided that the cattle sanitary board might fix fees for the inspection of cattle and hides, section 221 (repealed in 1889), and that such fees shall be paid to the secretary of the board and placed to the credit of the cattle sanitary board, section 222, and shall be used, together with funds realized from taxes levied and assessed or to be levied and assessed upon cattle only, to defray the expenses of the board, section 220. Chapter 44 of the laws of 1899 makes no changes in the law material to the consideration of this case. Chapter 53 of the laws of 1899 provides a fee of three cents for inspection of cattle. Then follows the act complained of, the pertinent provisions whereof are sections three and four of chapter 45, of the laws of 1901, which are as follows:—

"SECTION 3. Hereafter it shall be unlawful for any person, firm or corporation to offer, or for any railroad company, or other common carrier to receive, for the purpose of shipment or transportation beyond the limits of this Territory, any hides that have not been inspected and tagged by a duly authorized inspector of the cattle sanitary board of New Mexico, for the district in which such hides originate. For each hide thus inspected there shall be paid by the owner or holder thereof, a fee or charge of ten cents, and

such fee or charge shall be a lien upon the hides thus inspected, until the same shall have been paid. Each inspector of hides shall keep a complete record of all inspections made by him, and
42 shall at once forward to the secretary of the cattle sanitary board, on blanks furnished him for that purpose, a complete report of each inspection, giving the names of the purchaser and shipper of the hides, as well as all the brands thereon, which said report shall be preserved by the secretary as a part of the records of his office."

"SECTION 4. Any person, firm or corporation, common carrier, railroad company or agent thereof, violating any of the provisions of this act, or refusing to permit the inspection of any hides as herein provided, shall upon conviction thereof, be deemed guilty of a misdemeanor and shall be fined in any sum not exceeding one thousand dollars for each and every violation of the provisions of this act."

Defendant attempts to justify the act in question under the general taxing power of the Territory. If it be true, as contended by defendant, that every hide produced in the Territory of New Mexico is by law subjected to the payment of the tax of ten cents, we can see no constitutional objection to the law. The limitation upon the taxing power as to equality and uniformity of taxation has its foundation in State constitutions. The only limitation in Territories applicable to the question at issue in this case is contained in the 14th amendment to the Constitution of the United States which g-arantees among other things to all persons the equal protection of the laws. This guaranty, it seems, is not quite the exact equivalent of equality and uniformity as uses in State constitutions. Given a reasonable and just classification of tax payers, all that the 14th amendment of the Constitution of the United States guarantees is that all in the class shall be treated alike. Giozza *v.* Tiernan, 148, U. S. 657. If, then, the legislative department of the government of the Territory has determined that the owners of cattle in the Territory of New Mexico ought in justice and in order to bear their just and fair share of the public burdens to pay a tax of ten cents per head upon each animal slaughtered in the Territory, and has so provided by statute, we can see no reason why such legislation must not be upheld. But an examination of every section of the statute relating to the subject under discussion fails to convince us that the legislature has so provided. It is true that every person killing a bovine animal
43 in New Mexico, is required by law to keep the hide for thirty days free to the inspection of the cattle sanitary board, but nowhere can there be found any requirement of law for any inspector or person to visit any place for the purpose of inspection of hides except slaughter-houses. It is provided in the statute that slaughter-houses shall be inspected once every thirty days, and we assume that the inspector is authorized, under section three of the act of 1901, to charge therefor the sum of ten cents. But it is not made his duty to visit and inspect hides in any other place or places

in the Territory. While it is true that the individual is required to keep the hide for thirty days, so as to permit inspection, it is entirely optional, so far as any requirement of law is concerned, with the inspector, as to whether he visits any place except a slaughter-house. It is a matter of common knowledge that large numbers of cattle are killed in this Territory by people not in slaughter-houses, and it cannot be said, therefore, that a tax of ten cents per hide is levied upon each hide in the Territory. No intention, therefore, of the legislature to tax hides of animals killed in places other than slaughter-houses, and not intended for export, can be drawn from the various statutes on the subject.

The power, then, which the legislature has sought to exercise must be attributed, not to the general taxing power, but to the police power; and this brings us to the second and more important point in this case, and that is, whether the act of 1901, taken in connection with all the other legislation upon the same subject, is a valid inspection law. It is urged that this statute is void, by reason of its antagonism to sections 8 and 10 of article — of the Constitution of the United States. In the first place it is to be observed that the facts in this case do not present the situation of a burden being imposed upon commerce with a foreign country. This being so, the burden is not prohibited by section 10 of article 1 of the Constitution. Woodruff *v.* Parham, 8 Wall. (U. S.) 123; Brown *v.* Huston, 144 U. S. 622. This section contains
44 the only grant or reservation in the Constitution of power to the States to enact inspection laws, and has reference only to commerce with a foreign country; but the same reason exists for the power to enact inspection laws applicable to inter-state commerce, and this power is admitted to be possessed by the States. Patapsco Guano Co. *v.* North Carolina Board of Agriculture, 171 U. S., 345, 354, 361; *in re* Redmond 41 Fed. 867, 874. The first objection to this law, treated as a police regulation, is that it fails to meet the requirements of an inspection law at all, as contemplated by the Constitution and interpreted by the courts. Inspection was first defined by Chief Justice Marshal in Gibbons *v.* Ogden, 9 Wheat. 1, 203, as follows: "The object of inspection laws is to improve the quality of articles produced by the labor of a country; to fit them for exportation; or, it may be, for domestic use. They act upon the subject before it becomes an article of foreign commerce, or of commerce among the States, and prepare it for that purpose. They form a portion of that immense mass of legislation which embraces everything within the territory of a State, not surrendered to the General Government; all of which can be most advantageously exercised by the States themselves." In Turner *v.* Maryland, 107 U. S., 38, 55, it was said: "Recognized elements of inspection laws have always been quality of the article, form, capacity, dimensions, and weight of package, mode of putting up, and marking and branding of various kinds, all these matters being supervised by a public officer having authority to pass or not pass the article as lawful

merchandise, as it did or did not answer the prescribed requirements." In Foster *v.* New Orleans, 94 U. S. 246, it is said: "The object of such laws is to certify the quantity and value of the articles inspected, whether imports or exports, for the protection of buyers and consumers." In Clintsman *v.* Northrup, 8 Cow. 46, it is said: "The object of those laws is to protect the community, so far as they apply to domestic sales, from frauds and impositions;
45 and in relation to articles designed for exportation, to preserve the character and reputation of the State in foreign markets." It would appear from these definitions that some element of quality, quantity, form, size, weight, etc., of the article inspected, designed for the protection of the consumer of the article or the reputation of the State wherein it originates, has always been deemed essential. However, the Supreme Court, in Voight *v.* Wright, 141 U. S., 63, expressly declines to limit the scope of valid inspection laws, leaving the matter to each case as it may arise. In People *v.* Campaigne Gen. Transatlantique, 107 U. S., 59, 63, it is said: "A State cannot make a law designed to raise money to support paupers, to detect or prevent crime, to guard against disease, and to cure the sick, an inspection law, within the constitutional meaning of that word, by calling it so in title." But this statement is to be taken in connection with the facts in that case, and not to announce a principle of universal application. In that case the tax was levied on immigrants, not property, and the law was held unconstitutional for that reason.

Assuming that the only reason or excuse for the law in question, is the fact that it is designed to aid in the detection and punishment of crime or fraud against the cattle industry of the Territory, as is claimed on argument by counsel for relator, the question is whether this is a proper end to be subserved by an inspection law. It is certainly a wide departure from original definitions to include such a law within them. But in Neilson *v.* Garza, 2 Woods (U. S.), 287, Bradley, circuit justice, a case which is often cited, and which has never, so far as we are aware, been criticised, just such a law as the one under consideration was sustained. In that case the complainant resided in Matamoras, Mexico, and was engaged in importing hides from that place to Brownsville, Texas, and thence to New York. He was subjected by the laws of Texas to the payment of an inspection fee of from six to ten cents
46 per hide by the inspector of the county into which the hides were imported, and of which he complained. The section under which the fee was exacted was a part of a general statute requiring all hides and animals domestic or foreign, to be inspected before they could be imported. The court said: "The exporter must obtain the certificate of the inspector, or his deputy, of the county into which the hides were imported, certifying note what things are to be certified the date of the importation, the name of the importer and of the owner, and of the person in charge, name of the place where imported, number of hides and animals imported,

and description of their marks and brands, if any there be, by which they can be identified."

"What is this but inspection? The party is to subject the hides or animals to the examination of the official inspector, that he may note everything about them, serving to their identification, ownership, etc."

"I do not say that such an inspection as this is necessary or expedient; but it is inspection; and at such a place as Brownsville, it may, for aught I know, be necessary police regulation to prevent frauds and clandestine removal and exportation of property belonging to the people of Texas."

It is here unequivocally announced that a police regulation for the ascertainment of the ownership of animals and hides and to prevent frauds or crimes in connection with such property, may properly be enforced by means of an inspection law. The law, so far as it related to domestic hides, was not drawn in question; but evidently it would be held valid for the same reasons assigned as to the foreign hides. It would be as competent to prevent by an inspection system frauds and crimes against property of this kind which had always remained in the state, as to so prevent frauds and crimes against property which had been removed from the State of Mexico and then reimported into the State, because the same neces-ities, by reason of the character of the property, the methods of produc-
47 ing the same, the facilities of committing frauds and crimes against the same, would exist in both cases in nearly or quite the same degree.

We therefore hold that it is competent by an inspection law to enforce a police regulation calculated and suited to prevent frauds and crimes against the cattle industry of the Territory.

Further objection is made by the relator on the ground that the inspection fees are beyond the requirements for inspection. This objection, standing alone, is not well founded. If the amount of money raised by an inspection system proves to be larger than is required for the purpose, it is to be presumed that the legislature will decrease the charge. And so long as the inspection fee is not so much in excess of what appears to be reasonably required for the inspection as to change the character of the act and makes it appear to be an act designed for revenue instead of regulation, the same presents no judicial question. Petapsco Guano Co., *v.* North Carolina Board of Agriculture, 171 U. *D.* 345. But this objection, taken in connection with the further objection by the relator that the fund realized by the inspection provided for by the act, are by law provided to be and are used for purposes other than paying the expenses of inspection, raises a most serious question in the case.

Section 220 of the Compiled Laws provides as follows:—

"In order to provide the necessary moneys for the payment of the expenses incurred by the cattle sanitary board of New Mexico, in the execution of the provisions of an act entitled 'An act in relation to live stock' approved February 14th, 1891, the said board shall have power

to borrow money and to issue negotiable paper therefor; but the indebtedness so created shall not at any time exceed the sum of five thousand dollars, and any indebtedness so created shall be paid out of revenue accruing to the cattle indemnity fund from taxes levied and assessed or to be levied and assessed upon cattle only, and
48 from fees arising from inspection of cattle and hides as hereinafter provided, and not otherwise."

Of course if it be true that no more money is raised by this inspection system than is required to pay the legitimate expenses of such inspection, then no one has been harmed. But, on the other hand, if it be true that more money is raised than is required, and that the surplus is permitted to be applied, by section 220, to the payment of the other expenses of the cattle sanitary board not connected with the inspection, the tax becomes a burden upon interstate commerce and cannot be sustained. In the first place, it is to be noted that section 220 provides that the board shall be supported, from, among other sources, "fees arising from inspection of cattle and hides as hereinafter provided," and it may well be doubted whether this is not a limitation on the diversion of fees for hide inspection to such fees as might have been collected under the provisions of section 221 prior to its repeal, the two sections being a part of the same act. If so, section 220 would not divert any fees collected under the act of 1901 under consideration. But assuming that section 220 does authorize diversion of fees collected under the latter act, the question is whether the allegations of relator are sufficient to question the constitutionality of the act. The allegation on the subject is contained in specification "I" of the writ and is as follows:

"I. That said pretended fee or charge is largely in excess of the amount of fee or charge which might be absolutely necessary for the making of an inspection such as is required by said pretended enactment, it being the fact that hides as aforesaid are gathered for exportation in car load lots, in the said towns of Albuquerque, Santa Fe, and Las Vegas, and that shipments are made from said points about twelve to fifteen times per year, on an average; that at such times there are on hand for shipment large numbers of hides, varying from 1000 to 3000, and that the same can be inspected at the rate of at least 400 per day, before being baled and compressed for shipment as hereinafter stated; that at such rate of inspection
49 the amount of such inspection would be at least forty dollars per day, whereas the fees and compensation of an inspector of the cattle sanitary board are fixed by law at $2.50 per day and necessary expenses, which said expenses could not exceed $5.00 per day in the discharge of his duties."

It thus appears that relator founds his whole objection to the excess of fees upon the fact that an inspector can earn more per day than, by any possibility, his per diem and expenses could cost. It is clearly overlooked, however, that the salary and expenses of an inspector may, and probably do, form a comparatively small proportion of the

cost of inspection. Records must be made, a secretary of the board must be paid, office records must be provided. The relator by the most liberal construction of his pleading cannot be held to have alleged that the fees collected are in excess of the requirements for all of these purposes and they all seem to be clearly legitimate expenses of the inspection.

We take notice of the statutes of the Territory which provide for and authorize the maintenance of the office of secretary of the cattle sanitary board, and that, as such the said officer has various other duties to perform than those which pertain to the business of inspection of hides. But the court is not furnished by the writ in this case with any information as to what proportion the business of attending to the inspection of hides bears to the whole business of the secretary of the board. We cannot see, therefore, from the allegations in the writ that the legitimate expenses of the hide inspection are not equal to the amount of fees collected. It has already been seen that the hearing in this case in the court below was had upon the petition, writ and motion to quash the writ. The motion to quash the writ was the equivalent of a demurrer and, of course, admitted the facts stated in the petition. In determining as a matter of law that the writ failed to state a cause of action, we
50 think the court below committed no —, it no where appearing from the allegations that the fees collected are in excess of the actual requirements for the enforcement of the law.

Further objection is made by relator to the effect that the tax of ten cents is excessive and practically prohibitive, for the reason that the tax of ten cents is in many cases more than the original value of the hide. It will, however, be observed that the word hide alone is used in the act of 1901, and a distinction between hides and pelts and skins is recognized in some of the sections of the statute. This statute has no application to pelts or skins, and these pelts and skins we assume are what is referred to in the petition as being of less value than the charge of ten cents.

Objection is made by relator that the said inspection law is impracticable, in that no provision is therein made to compel an inspector to promptly inspect hides intended for shipment, and that thereby great delays, embarrassment and loss result to the relator. This contention is not argued in the brief, and we will not therefore consider the same at this time.

For the reasons assigned, the judgment of the court below should be affirmed, and it is so ordered.

FRANK W. PARKER,
Associate Justice.

We concur:
WILLIAM J. MILLS, C. J.
WM. H. POPE, A. J.

Benjamin S. Baker, A. J. dissents.

Mann, J. not having heard argument did not participate herein nor did McFie, A. J., having tried the case below.

51 In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1904.

TERRITORY OF N. M. *ex Rel.* T. J. McLean & Co., Appellant-, *vs.* D. & R. G. R. R. Co., Appellee. } No. 934. Appeal from District Court, Santa Fe County.

POPE, J. (concurring):

While I do not regard as tenable the position of the appellee, that the hides here involved, were at the time and place named in the writ, not articles of interstate commerce and that they were thus not within the protection afforded by the interstate commerce clause of the Constitution, I am of opinion that the fee imposed was a valid requirement in the exercise of the police power of the Territory and thus not within the prohibition against the regulation of interstate commerce by the States. The right of the Territory in the exercise of its police power, to exact a proper fee for inspection in cases such as this, is pointed out very clearly in the opinion of the court. It is contended by the relator, however, that even in assuming this power the recitals of the writ taken as true upon the motion to quash show the fee imposed to be excessive and also show that the legislature has diverted a portion of the proceeds to purposes foreign to the ends of the inspection, and that the law thus becomes in effect a revenue measure instead of an inspection charge and is void as an improper burden upon interstate commerce. It is upon this particular contention that I desire by this concurring opinion to record a brief review of the authorities.

The charges which inspection laws impose must be such "as nearly defray the expense of executing the inspection" (*In re* Rebman 41 Fed. 875), but to render a law void because of excessiveness of the fee there must be either such excessiveness as "to shock the
52 conscience" (Patsone case, 52 Fed. 690) and to demonstrate that the legislature under the guise of an inspection law was levying a tribute upon interstate commerce, or there must be created by the law imposing the fee some diversion of the funds from the expenses of inspection to other directions, thus evidencing a legislative purpose to misuse the funds. In either case the legislative intent, presumed from the excess in one instance and evidenced by its express language in the second, stamps the law as a mere sham, a creator of revenue under the guise of a statute for inspection. An instance of the first class of law is found in the recent case of Postal Telegraph Co. *v.* Taylor, 192 U. S. 71, where upon a showing that the fee charged for supervision and inspection was twenty times the amount that would be expended for the purpose, the court held that it was impossible by "the widest stretch of imagination" to regard the fee as reasonable and it was declared void as "a mere subterfuge for the purpose of raising revenue."

Instances of the second class are found in Amer. Fert. Co. v. Board of Agriculture (43 Fed. 613) where the legislature appropriated thousands of dollars derived from so called inspection fees to purposes entirely foreign to the expense of such inspection and the statute was declared void; and also *In re* Rebman, 41 Fed. 875, where the law was declared void because "half of the moneys paid for inspection were given to the inspectors and the other *half ordered into the treasury.*" Is this law void under either of these lines of authority? The first which is a question of fact, must be determined by the allegations of the writ, taken as confessed; the second, which is a matter of law, by the wording of the statute. The only allegations of the petition on this subject are found in paragraph "*i*" of the writ, where it is in effect said that "the pretended fee or charge is largely in excess of the amount of fee or charge which *might* be absolutely necessary for the making "of the required inspection, and where the relator goes on further to allege
that under certain circumstances the inspector could make
53 forty dollars per day when his fees and expenses would amount to only five dollars per day. I cannot consider this allegation of what an inspector under the most favorable circumstances *could* make upon a given day as the equivalent of an allegation that the proceeds of the system of hide inspection taken in the aggregate and for a stated period, are in excess of the amount necessary to defray the expenses of that system for such period. Relator's position overlooks the fact that there may be days when the inspector inspects only a few hides instead of 400, and yet with the same expenses and per diem. It overlooks the fact also that the mere expenses and per diem of the inspector is not all that is charg-able against the fees collected. The system provides for blanks to be printed, tags to be furnished, data to be forwarded to the office of the cattle sanitary board, and an office force there employed to enter such data and preserve the same. It will thus be seen that the fact that one or more inspectors *might* upon a given day make forty dollars, when their personal expenses and compensation are much less, is not equivalent to an allegation that the fees charged are in excess of the aggregate cost of such inspection from year to year. As was said in Cherter City v. Telegraph Co., 154 Pa. St. 464 (quoted with approval in Western Union Telegraph Co. v. New Hope 187 U. S. 425), where it was aver-ed in the affidavit of defense that the rates charged were at least five times the amount of the expense envolved in the supervision exercised by the municipality:

"For the purpose of this case, we must treat this averment as true as far as it goes. The difficulty is it does not go far enough. It refers only to the usual ordinary or necessary expenses of municipal officers, of issuing licenses and other expenses thereby imposed upon the municipality. It makes no reference to the liability imposed upon the city by the erection of telegraph poles. It is the
duty of the city to see that the poles are safe and properly
54 maintained, and should a citizen be injured in person or property by reason of a neglect of such duty an action might lie

against the city for the consequences of such neglect. It is a mistake therefore to measure the reasonableness of the charge by the amounts actually expended by the city for a particular year, to the particular purpose specified in the affidavit."

Coming now to the second point as to whether there is any legislative mis-appropriation of the funds derived from these inspections the attention of the court has been called by paragraph "*j*" to Compiled Laws, section 220, which it is alleged diverts the funds arising from "the inspection of hides" to the payment of notes issued from time to time to aid in the execution of the provisions of the act approved February 14, 1901. It is alleged that this is a diversion of the funds in question and renders the law void. It would seem that the words "fees arising from inspection of cattle and hides as *hereinafter provided*," as used in section one of chapter 67 of the Laws of 1893, compiled as section 220 refer only to the fees provided for in section 2 and not to fees provided for by the act of 1891, passed eight years later, and in this view of the matter the fees here in question were not by said statute made subject to the payment of the negotiable paper authorized under the Compiled Laws, section 220. But assuming that such fees were directed to be so used, was this a diversion of such fees from their legitimate purpose? The law of February 14, 1891, referred to in section 220, empowers the cattle sanitary board among other things (section 208) to make "all necessary rules and regulations respecting the inspection of hides and slaughter houses of this Territory and for the government of all employés of said sanitary board." It also regulates the duties of inspectors (section 213), and provides for the salary of the secretary and other employees of the board. It thus appears that this act creates fees and expenses which are a legitimate charge against the fees collected under the act of 1901, for, as we have above
55 seen, the inspectors and the secretary of the board constitute an important part of the machinery required for the inspection under that act. Using the money to aid in the execution of the act of 1891, is thus not necessarily a diversion of the funds raised by the act of 1901. As above pointed out there is no sufficient allegation of any excess in the fees chargeable under the act of 1901 over the expenses of inspection, so there is no ground for the assumption that section 220 effects a diversion of the funds. For aught that appears to the contrary, all the funds collected under the law of 1901, are used in paying that portion of the expenses of the board properly chargeable against the inspection provided for by that act. The fact that the funds collected under the act of 1901, are coverred into the general funds of the cattle sanitary board does not affect the case. That was true in the Patapsco case, 52 Fd. 696 and is a mere matter of book-keeping.

I am of opinion that the judgment should be affirmed.

W. H. POPE,
Associate Justice.

56 TERRITORY OF NEW MEXICO, } ss.
Supreme Court, }

I, the undersigned, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the above and foregoing fifty-five pages contain a true, full and complete transcript of the record and proceedings, pleadings and opinion filed in the above entitled cause, which is transmitted to the Supreme Court of the United States, in accordance with an appeal herein granted.

Witness my hand and the seal of the supreme court of the Territory of New Mexico, this the 31st day of January, A. D., 1905.

[Seal Supreme Court, Territory of New Mexico.]

JOSÉ D. SENA,
Clerk Supreme Court, Territory of New Mexico.

Endorsed on cover: File No. 19,681. New Mexico Territory supreme court Term No. 212. The Territory of New Mexico *ex rel.* E. J. McLean & Company, appellants, *vs.* The Denver & Rio Grande Railroad Company. Filed March 24th, 1905. File No. 19,681.